

Rule 45. Subpoena.

(a) Form; issuance.

(a)(1) Every subpoena shall:

(a)(1)(A) issue from the court in which the action is pending;

(a)(1)(B) state the title of the action, the name of the court from which it is issued, the name and address of the party or attorney ~~serving~~issuing the subpoena, and its civil action number;

(a)(1)(C) command each person to whom it is directed

(a)(1)(C)(i) to appear ~~to and~~ give testimony at a trial, ~~or at~~ hearing, or ~~at~~ deposition,
or

(a)(1)(C)(ii) to ~~appear and~~ produce ~~or to permit for~~ inspection and copying of
documents or tangible things in the possession, custody or control of that person, or

(a)(1)(C)(iii) to copy documents in the possession, custody or control of that person
and mail the copies to the party or attorney issuing the subpoena before a date certain,
or

(a)(1)(C)(iv) to appear and to permit inspection of premises, ~~at a time and place~~
~~therein specified;~~

(a)(1)(D) if an appearance is required, specify the date, time and place for the
appearance; and

~~(a)(1)(D)-(a)(1)(E)~~ set forth the ~~text of~~ Notice to Persons Served with a Subpoena, in
a form substantially similar ~~form~~ to the subpoena form appended to these rules.

~~(a)(2) A command to produce or to permit inspection and copying of documents or~~
~~tangible things, or to permit inspection of premises, may be joined with a command to~~
~~appear at trial, or at hearing, or at deposition, or may be issued separately.~~

~~(a)(3)-(a)(2)~~ The clerk shall issue a subpoena, signed but otherwise in blank, to a
party requesting it, who shall complete it before service. An attorney admitted to
practice in ~~the court in which the action is pending Utah~~ may ~~also~~ issue and sign a
subpoena as an officer of the court.

(b) Service; ~~scope fees; prior notice.~~

(b)(1) ~~Generally.~~

~~(b)(1)(A)~~ A subpoena may be served by any person who is at least 18 years of age
and not a party ~~and is not less than 18 years of age to the case~~. Service of a subpoena
upon ~~a the~~ person ~~named therein to whom it is directed~~ shall be made as provided in
Rule 4(d) ~~for the service of process and, if the,~~

~~(b)(2)~~ If the subpoena commands a person's appearance, ~~is commanded, by~~
~~tendering to that person the party or attorney issuing the subpoena shall tender with the~~
~~subpoena~~ the fees for one day's attendance and the mileage allowed by law. When the
subpoena is issued on behalf of the United States, or this state, or any officer or agency
of either, fees and mileage need not be tendered in advance.

~~(b)(3)~~ ~~Prior notice of any commanded production or inspection of documents or~~
~~tangible things or~~ If the subpoena commands a person to copy and mail documents, to
produce documents or tangible things for inspection and copying, or to permit inspection
of premises, ~~before trial shall be served~~ the party or attorney issuing the subpoena
shall serve prior notice on each party in the manner prescribed by Rule 5(b) at least
seven days before the subpoena is served on the person to whom it is directed.

~~(b)(1)(B)~~ ~~Proof of service when necessary shall be made by filing with the clerk of~~
~~the court from which the subpoena is issued a statement of the date and manner of~~
~~service and of the names of the persons served, certified by the person who made the~~
~~service.~~

~~(b)(1)(C)~~ ~~Service of a subpoena outside of this state, for the taking of a deposition or~~
~~production or inspection of documents or tangible things or inspection of premises~~
~~outside this state, shall be made in accordance with the requirements of the jurisdiction~~
~~in which such service is made.~~

~~(b)(2)~~ ~~Subpoena for appearance at trial or hearing. A subpoena commanding a~~
~~witness to appear at a trial or at a hearing pending in this state may be served at any~~
~~place within the state.~~

~~(b)(3)~~ ~~Subpoena for taking deposition.~~ (c) Appearance; resident; non-resident.

~~(b)(3)(A)~~ (c)(1) A person who resides in this state may be required to appear:

(c)(1)(A) at a trial or hearing in the county in which the case is pending; and

60 (c)(1)(B) at a deposition, or to produce documents or things, or to permit inspection
61 of premises only in the county ~~where-in which~~ the person resides, ~~or~~ is employed, or
62 transacts business in person, or at such other place as the court may order.

63 (c)(2) A person who does not reside in this state but who is served within this state
64 may be required to appear:

65 (c)(2)(A) at a trial or hearing in the county in which the case is pending; and

66 (c)(2)(B) at a deposition, or to produce documents or things, or to permit inspection
67 of premises only in the county ~~in this state where-in which~~ the person is served ~~with a~~
68 ~~subpoena~~, or at such other place as the court may order.

69 ~~(b)(3)(B) A subpoena commanding the appearance of a witness at a deposition may~~
70 ~~also command the person to whom it is directed to produce or to permit inspection and~~
71 ~~copying of documents or tangible things relating to any of the matters within the scope~~
72 ~~of the examination permitted by Rule 26(b), but in that event the subpoena will be~~
73 ~~subject to the provisions of Rule 30(b) and paragraph (c) of this rule.~~

74 ~~(b)(4) Subpoena for production or inspection of documents or tangible things or~~
75 ~~inspection of premises. A subpoena to command a person who is not a party to produce~~
76 ~~or to permit inspection and copying of documents or tangible things or to permit~~
77 ~~inspection of premises may be served at any time after commencement of the action.~~
78 ~~The scope and procedure shall comply with Rule 34, except that the person must be~~
79 ~~allowed at least 14 days to comply as stated in subparagraph (c)(2)(A) of this rule. (d)~~
80 Payment of production or copying costs. The party ~~serving or~~ attorney issuing the
81 subpoena shall pay the reasonable cost of producing or copying ~~the~~ documents or
82 tangible things. Upon the request of the person subject to the subpoena, the party or
83 attorney issuing the subpoena shall pay the reasonable cost in advance. Upon the
84 request of any other party and the payment of reasonable costs, the party ~~serving or~~
85 attorney issuing the subpoena shall provide to the requesting party copies of all
86 documents or tangible things obtained in response to the subpoena or shall make the
87 tangible things available for inspection.

88 ~~(c)-(e)~~ Protection of persons subject to subpoenas: objection.

89 ~~(c)(1) A (e)(1) The~~ party or ~~an~~ attorney ~~responsible for the issuance and service of~~
90 issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or

91 expense on a the person subject to that the subpoena. The court ~~from which the~~
92 ~~subpoena was issued~~ shall enforce this duty and impose upon the party or attorney in
93 breach of this duty an appropriate sanction, which may include, but is not limited to, lost
94 earnings and a reasonable attorney's attorney fee.

95 ~~(c)(2)(A) (e)(2)~~ A subpoena ~~served upon a person who is not a party to copy and~~
96 ~~mail documents,~~ to produce ~~or to permit inspection and copying of~~ documents or
97 tangible things for any purpose, or to permit inspection of premises, ~~whether or not~~
98 ~~joined with a command to appear at trial, or at hearing, or at deposition, must allow the~~
99 ~~person at least 14 days after service to comply, unless a shorter time has been ordered~~
100 ~~by the court for good cause shown shall comply with Rule 34(a) and (b)(1), except that~~
101 ~~the person subject to the subpoena must be allowed at least 14 days after service to~~
102 ~~comply.~~

103 ~~(c)(2)(B) A person commanded to produce or to permit inspection and copying of~~
104 ~~documents or tangible things or to permit inspection of premises need not appear in~~
105 ~~person at the place of production or inspection unless also commanded to appear at~~
106 ~~trial, at hearing, or at deposition.~~

107 ~~(c)(2)(C) A person commanded to produce or to permit inspection and copying of~~
108 ~~documents or tangible things or inspection of premises may, before the time specified~~
109 ~~for compliance with the subpoena, serve upon the party or attorney designated in the~~
110 ~~subpoena written objection to inspection or copying of any or all of the documents or~~
111 ~~tangible things or inspection of the premises.~~ (e)(3) The person subject to the subpoena
112 may object if the subpoena:

113 (e)(3)(A) fails to allow reasonable time for compliance;

114 (e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in
115 a county in which the person does not reside, is not employed, or does not transact
116 business in person;

117 (e)(3)(C) requires a non-resident of this state to appear at other than a trial or
118 hearing in a county other than the county in which the person was served;

119 (e)(3)(D) requires the person to disclose privileged or other protected matter and no
120 exception or waiver applies;

(e)(3)(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(e)(3)(F) subjects the person to an undue burden; or

(e)(3)(G) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(e)(4)(A) If the person subject to the subpoena objects, the objection must be made before the date for compliance.

(e)(4)(B) The person subject to the subpoena shall state the objection in a concise, non-conclusory manner. If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party or attorney issuing the subpoena to contest the objection.

(e)(4)(C) The person shall serve the objection on the party or attorney issuing the subpoena. The party or attorney issuing the subpoena shall serve a copy of the objection on the other parties.

(e)(5) If objection is made, the party ~~serving or attorney issuing~~ the subpoena ~~shall is~~ not ~~be~~ entitled to ~~inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce,~~ compliance but may move at any time for an order to compel the production compliance. The motion shall be served on the other parties and on the person subject to the subpoena. Such an An order to compel production compliance shall protect ~~any the person who is not a party or an officer of a party~~ subject to the subpoena from significant expense ~~resulting from the inspection and copying commanded or harm. The court may quash or modify the subpoena. If the party or attorney issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.~~

~~(c)(3)(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it:~~

~~(c)(3)(A)(i) fails to allow reasonable time for compliance;~~

~~(c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition in a county in which the resident does not reside, or is not employed, or does not transact business in person; or requires a non-resident of this state to appear at deposition in a county other than the county in which the person was served;~~

~~(c)(3)(A)(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies;~~

~~(c)(3)(A)(iv) subjects a person to undue burden.~~

~~(c)(3)(B) If a subpoena:~~

~~(c)(3)(B)(i) requires disclosure of a trade secret or other confidential research, development, or commercial information;~~

~~(c)(3)(B)(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party;~~

~~(c)(3)(B)(iii) requires a resident of this state who is not a party to appear at deposition in a county in which the resident does not reside, or is not employed, or does not transact business in person; or~~

~~(c)(3)(B)(iv) requires a non-resident of this state who is not a party to appear at deposition in a county other than the county in which the person was served; the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

~~(d) (f) Duties in responding to subpoena.~~

(f)(1) A person commanded to copy and mail documents or to produce documents or tangible things for inspection and copying shall serve on the party or attorney issuing the subpoena a declaration under penalty of perjury stating in substance:

182 (f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

183 (f)(1)(B) that the documents or tangible things copied or produced are a full and
184 complete response to the subpoena;

185 (f)(1)(C) that the documents are the originals or that a copy is a true copy of the
186 original; and

187 (f)(1)(D) the reasonable cost of copying or producing the documents or tangible
188 things.

189 ~~(d)(1)–(f)(2)~~ A person ~~responding to a subpoena commanded to copy and mail~~
190 ~~documents or~~ to produce documents ~~or tangible things for inspection and copying~~ shall
191 ~~copy or~~ produce them as they are kept in the usual course of business or shall organize
192 and label them to correspond with the categories in the ~~demand subpoena~~.

193 ~~(d)(2) When information subject to a subpoena is withheld on a claim that it is~~
194 ~~privileged or subject to protection as trial preparation materials, the claim shall be made~~
195 ~~expressly and shall be supported by a description of the nature of the documents,~~
196 ~~communications, or things not produced that is sufficient to enable the demanding party~~
197 ~~to contest the claim.~~

198 ~~(e)–(g)~~ Contempt. Failure by any person without adequate excuse to obey a
199 subpoena served upon that person ~~may be deemed a~~ is punishable as contempt of ~~the~~
200 ~~court from which the subpoena issued. An adequate cause for failure to obey exists~~
201 ~~when a subpoena purports to require a nonparty to appear or produce at a place not~~
202 ~~within the limits provided by subparagraph (c)(3)(A)(ii).~~

203 ~~(f)–(h)~~ Procedure ~~where~~ when witness ~~conceals himself~~ evades service or fails to
204 attend. If a witness evades service of a subpoena, or fails to attend after service of a
205 subpoena, the court may issue a warrant to the sheriff of the county to arrest the
206 witness and bring the witness before the court.

207 ~~(g)–(i)~~ Procedure when witness is confined in jail. If the witness is a prisoner ~~confined~~
208 ~~in a jail or prison within the state,~~ a party may move for an order ~~for examination to~~
209 ~~examine the witness~~ in the jail or prison ~~upon deposition or, in the discretion of the~~
210 ~~court, for temporary removal and production~~ or to produce the witness before the court
211 or officer for the purpose of being orally examined, ~~may be made upon motion, with or~~

~~without notice, by a justice of the Supreme Court, or by the district court of the county in which the action is pending.~~

~~(h)-(j) Subpoena unnecessary; when.~~ A person present in court, or before a judicial officer, may be required to testify in the same manner as if the person were in attendance upon a subpoena.

~~Advisory Committee Notes~~

~~Purposes of Amendment. The 1994 amendments represent a substantial change from prior practice. Patterned on the 1991 amendments to Fed. R. Civ. P. 45, these amendments expedite and facilitate procedures for serving subpoenas, modify procedures relating to persons who are not parties to correspond to procedures relating to parties under Utah R. Civ. P. 34, and specify the rights and obligations of persons served with a subpoena.~~

~~Paragraph (a). This paragraph amends former Rule 45 in the following important respects:~~

~~First, subparagraph (a)(6)(3) authorizes an attorney to issue and sign a subpoena as an officer of the court. The subparagraph eliminates the requirement that an attorney obtain a subpoena from the clerk of the court, and the requirement that a subpoena be issued under seal of the court. An attorney who is not a member of the Utah State Bar but who has been admitted to practice pro hac vice in the court in which the action is pending is authorized to issue a subpoena. Consistent with the authority of an attorney to issue a subpoena, subparagraph (a)(1)(B) requires every subpoena to identify the attorney serving it. Subparagraph (a)(1)(A) requires every subpoena to issue from the court in which the action is pending, amending former Rule 45(d)(1), which authorized a deposition to be issued from the court where the deposition is to take place, as well as the court where the action is pending.~~

~~Second, subparagraph (a)(2) authorizes a party to serve upon a person who is not a party a subpoena to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises. A party no longer must serve a subpoena duces tecum to discover documents or tangible things from a person who is not a party, although the amended rule preserves that option, and no longer must bring an independent action for entry onto land. Subparagraph (a)(2) also requires a person~~

~~who is not a party to produce materials within that person's control, which subjects that person to the same scope of discovery as if that person were a party served with a discovery request under Rule 34.~~

~~Third, subparagraph (a)(1)(D) requires every subpoena to state the rights and duties of a person served in a form substantially similar to the form in the Appendix to these rules.~~

~~Paragraph (b) also amends former Rule 45 in several important respects. Subparagraph (b)(1)(A) requires prior notice of each commanded production or inspection of documents or tangible things, or inspection of premises, to be served as prescribed by Rule 5(b). This subparagraph ensures that other parties will have notice enabling them to object to or participate in discovery, or to serve a demand for additional materials. No similar provision is included for depositions, because depositions are governed by Rule 30 or 31. Subparagraph (b)(1)(A) specifies that the subpoena may be served as required by Rule 4(e), amending paragraph (c) of the former rule.~~

~~Subparagraph (b)(4) authorizes a subpoena for production or inspection of documents or tangible things or inspection of premises to be served upon a person who is not a party at any time after commencement of the action. A subpoena served upon a person who is not a party has the same scope specified in Rule 34(a) for a request served upon a party, and is subject to the same procedures specified in Rule 34(b). A person who is not a party is not required to file a written response to the subpoena, unless the party objects to the subpoena pursuant to subparagraph (c)(2)(D).~~

~~Subparagraph (b)(4) also requires each party serving a subpoena for the production of documents to provide to other parties copies of documents obtained in response to the subpoena. No comparable provision appears in the federal rule, but the Committee determined that such a provision would alleviate some of the burden imposed upon persons who are not parties and shift it to parties.~~

~~Other subparagraphs make minor amendments to the former Rule 45. Subparagraph (b)(1)(C) amends former paragraph (d)(3) to include a subpoena for document production or inspection, as well as a deposition subpoena. Subparagraph (b)(2) is the former paragraph (e) with minor modifications. Subparagraph (b)(3)(A)~~

~~requires a nonresident to attend deposition only in the county where the nonresident is served, amending former paragraph (d)(2) to eliminate the requirement that a nonresident attend a deposition within forty miles of the place of service.~~

~~Paragraph (c). Paragraph (c) states the rights of witnesses or other persons served with subpoenas. The paragraph does not diminish rights conferred by any other rule or any other authority. Subparagraph (c)(1) states the duty of an attorney to minimize the burden on a witness who is not a party, and specifies that such a witness may recover lost earnings that result from the misuse of a subpoena. Subparagraph (c)(1) expands the responsibility of an attorney stated in Rule 26(g); this responsibility is correlative to the expanded power of an attorney to issue a subpoena.~~

~~Subparagraph (c)(2)(A) specifies that a person who is not a party served with a subpoena for the production or inspection of documents or tangible things or inspection of premises must have at least 14 days to respond. A subpoena to appear at trial, at hearing, or at deposition must be served within a reasonable time, unless it also requires the production of documents.~~

~~Subparagraph (c)(2)(C) states that a person who is not a party has no obligation to make copies or to advance costs, and has no counterpart in either the federal rule or the former state rule. The Committee included this statement in the rule so that it would become part of the notice provided to each person served with a subpoena.~~

~~Subparagraph (c)(2)(D) specifies that a person served with a subpoena for the production or inspection of documents or tangible things or inspection of premises may serve written objection upon the party serving the subpoena. The party serving the subpoena bears the burden to obtain an order to compel production, and must provide prior notice to the person served of the motion to compel. A person served with a subpoena to appear at trial, at hearing, or at deposition, must appear unless the person obtains a court order to quash or modify the subpoena; a written objection to the serving party is insufficient. A person served with a subpoena duces tecum may object to providing documents by notifying the party serving the subpoena, but still must appear to testify at trial, at hearing, or at deposition, unless the person obtains an order to quash or modify the subpoena.~~

304 ~~Subparagraph (c)(3) identifies the circumstances in which a subpoena may be~~
305 ~~modified or quashed. It follows paragraph (c)(3) of the 1991 amendments to Fed. R.~~
306 ~~Civ. P. 45, but is modified to specify the locations where residents or nonresidents of~~
307 ~~the State may be compelled to attend deposition.~~

308 ~~Paragraph (d). This paragraph follows the 1991 amendments to Fed R. Civ. P. 45.~~
309 ~~Subparagraph (d)(2)(D) applies to privileged attorney-client communications, and to all~~
310 ~~attorney work product protected under the doctrine of Hickman v. Taylor, 329 U.S. 495,~~
311 ~~67 S. Ct. 385, 91 L. Ed. 451 (1947), and progeny.~~

312 ~~Paragraph (e). This paragraph specifies that an adequate cause for failure to obey~~
313 ~~exists when a subpoena purports to require a party to respond at a place beyond the~~
314 ~~geographic boundaries imposed by the rule, amending former paragraph (f).~~

315 ~~Paragraph (f). This is the former paragraph (g), amended to eliminate references to~~
316 ~~the masculine pronoun.~~

317 ~~Paragraph (g). This is the former paragraph (h).~~

318 ~~Paragraph (h). This is the former paragraph (i), amended to eliminate references to~~
319 ~~the masculine pronoun.~~

320